

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 09-18-02

Division: Public Safety

Bulk Item: Yes x No     

Department: Airports

**AGENDA ITEM WORDING:** Approval of an amendment to a Lease Agreement with Tony D'Aiuto, d/b/a Antique Aircraft Restoration, for a 180 day extension to construct a maintenance hangar at the Marathon Airport.

**ITEM BACKGROUND:** This amendment provides a 180 day extension for the construction of a maintenance hangar at the Marathon Airport. The extension expires December 31, 2002.

**PREVIOUS RELEVANT BOCC ACTION:** The Monroe County Board of County Commissioners approved an original agreement with Tony D'Aiuto d/b/a Antique Aircraft Restoration on June 14, 2000. On March 21, 2001 the BOCC approved to amend the original lease to provide for a 180 day extension with appropriate provisions to address the environmental compliance.

**CONTRACT/AGREEMENT CHANGES:** This amendment provides a 180 day extension to the original lease for the construction of a maintenance hangar with provisions to address the environmental compliance.

**STAFF RECOMMENDATIONS:** Approval

**TOTAL COST:**

**BUDGETED:** Yes      No     

**COST TO COUNTY:** N/A

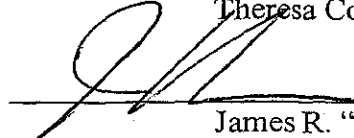
**REVENUE PRODUCING:** Yes      No      **AMOUNT PER Year \$**     

**APPROVED BY:** County Atty: yes OMB/Purchasing: yes Risk Management: yes

**DEPARTMENT APPROVAL:**

  
Theresa Cook

**DIVISION DIRECTOR APPROVAL:**

 9/18/2002  
James R. "Reggie" Paros

**DOCUMENTATION:** Included x To Follow      Not Required     

**DISPOSITION:**                                     

**AGENDA ITEM #** 64

**MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**

**CONTRACT SUMMARY**

Contract with: Tony D'Aiuto Contract # \_\_\_\_\_  
 Effective Date: 09-18-02  
 Expiration Date: 06-14-20

**Contract Purpose/Description:**

This amendment adds a 180 day extension to the original agreement to construct a maintenance hangar at the Marathon Airport. The 180 day extension expires on December 31, 2002.

Contract Manager: Theresa Cook 6060 Airport/15  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 9/18/02 Agenda Deadline: 9/04/02

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ \_\_\_\_\_ Current Year Portion: \$ \_\_\_\_\_  
 Budgeted? Yes ☐ No ☐ Account Codes: \_\_\_\_\_  
 Grant: \$ \_\_\_\_\_  
 County Match: \$ \_\_\_\_\_

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$N/A/yr For: \_\_\_\_\_  
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>9/9/2002</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9/9/2002</u>
Risk Management	<u>9-4-02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slanik</u>	<u>9-4-02</u>
O.M.B./Purchasing	<u>9/4/02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9/5/02</u>
County Attorney	<u>9/5/02</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9/6/2</u>

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**AMENDMENT TO LEASE AGREEMENT**

TONY D'AIUTO d/b/a Antique Aircraft Restorations

THIS AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2002, by and between Monroe County, hereafter County, and TONY D'AIUTO d/b/a Antique Aircraft Restorations, Lessee or Tenant.

WHEREAS, on the 14th day of June, 2000, the parties entered into a 20 year lease agreement, to allow lessee to construct facilities required by subsection VI(D)(4) of the County's Revised Standards for Commercial Aeronautical Activities for Aircraft, Engine, Propellor, and Accessory Maintenance Services at the Marathon Airport, hereafter original lease. Copies of the original lease are attached to this amendment and made a part of it; and

WHEREAS, the parties desire to amend original agreement; now, therefore,

IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

1. Paragraph 3. a) of the original agreement is amended to read:

3. a) By December 31, 2002, the lessee must have built, and obtained a certificate of occupancy for, the facilities required by subsection VI(D)(4) of the County's Revised Standards for Commercial Aeronautical Activities, a copy of which is attached to the original lease and incorporated as Exhibit B of the original lease. In order to assure that the facilities are, in fact, timely completed, the Lessee must adhere to the following construction schedule:

- 1) By June 30, 2001, a complete application (complete as determined by the Monroe County Planning Department) for a conditional use must be filed with the Monroe County Planning Department:

- 2) By December 31, 2001, all necessary permits must have been received and facilities construction begun:

- 3) By December 31, 2002, the facilities must be complete, inspected and a certificate of occupancy received.

The construction schedule set forth above are material terms and conditions of this lease. The failure of the Lessee to meet the construction schedule - at any step - is a material breach of this lease that entitles the County to terminate the lease under paragraph 10. The FKMAP Director may (but is under no obligation to do so) extend the construction schedule dates because of circumstances beyond the control of the Lessee such as hurricanes or other natural disasters.

2. Paragraph 4 of the original agreement is amended to read:

4. During the first two years and six months of this lease, while the facilities required in paragraph 3 are under construction, the Lessee may provide the services described in subparagraph 1 (b) from a mobile vehicle or on other parcels at the FKMAP where the Lessee has the permission of the tenant(s). The authorization provided by this paragraph 4 is temporary and terminates on December 31, 2002, unless the construction schedule for facilities has been extended by the FKMAP Director.

3. The Lessee will perform all maintenance in accordance with the Federal Environmental Protection Agency (EPA), the Florida Department of Environmental Protection (DEP) Regulations and Monroe County Marathon Airports National Pollution Discharge Elimination System permit and Storm Water Pollution Prevention Plan utilizing Best Management Practices. Copies of Regulations, Permits, Plans and Practice materials may be obtained at the Airport Administration Office

4. Except as set forth in this amendment to the original lease agreement in all other respects the terms and conditions of the original agreement remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Mayor/Chairman

ATTEST:

TONY D'AIUTO d/b/a  
Antique Aircraft Restorations

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

JdairMAPAntiqueX

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
ROBERT L. ROSE  
DATE 9-5-02

LEASE AGREEMENT FOR AIRCRAFT MECHANIC FACILITIES  
MARATHON AIRPORT

THIS LEASE AGREEMENT is made and entered into on the 14 day of June, 2000, by and between the BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, a political subdivision of the State of Florida, whose address is Marathon Airport, 9400 Overseas Highway, Marathon, FL 33050, hereafter County, Owner or Lessor, and TONY D'AIUTO, an individual, d/b/a Antique Aircraft Restorations, hereafter Lessee or Tenant.

WHEREAS, the owners of various small private aircraft at the Florida Keys Marathon Airport (FKMAP), have requested that additional airplane mechanic services be made available at the FKMAP;

WHEREAS, the FAA Advisory Circular entitled Exclusive Rights And Revised Minimum Standards For Commercial Aeronautical Activities dated April 7, 2000 contemplates the provision of the airplane mechanic services authorized by this lease; and

WHEREAS, the County's Revised Standards for Commercial Aeronautical Activities, adopted by the County Commission on August 1, 1990, also contemplates the provision of the airplane mechanic services contemplated by this lease as long as certain capital improvements are made to the leasehold; now, therefore,

W I T N E S S E T H:

IN CONSIDERATION of the mutual consideration and promises set forth below, the parties agree as follows:

1. a) The County leases to Lessee an undeveloped parcel of land at the FKMAP approximately 100' by 250', hereafter the premises. The premises are depicted on Exhibit A which is attached to this lease and made a part of it. The ingress and egress to the premises are also depicted on Exhibit A but are not part of the premises. The County covenants to keep open such ingress/egress or to furnish the Lessee with access approximately equal to that depicted on Exhibit A.

b) The Lessee may only use the premises for aircraft, engine, propeller and accessory maintenance services described in subsection VI(D)(1) of the County's Revised Standards for Commercial Aeronautical Activities, a copy of which is attached to this lease as Exhibit B and made a part of it. No additional services may be performed by the Lessee without the consent of the Board of County Commissioners. Notwithstanding Exhibit B, the Lessee acknowledges that all applicable provisions of the County's Revised Standards are binding on the Lessee – whether or not attached and incorporated by reference into this lease – and that the County's Board of County Commissioners may amend or modify the Standards during the term of this lease and that such amendments or modifications will be binding upon the Lessee.

2. a) The term of this lease is for twenty (20) years beginning on July 1, 2000 and ending on June 30, 2020 unless terminated sooner as provided herein.

b) The rent is \$7,500 per year ( $\$.30 \times 25,000$  square feet = \$7,500) or \$625 per month. The rent may be paid annually or monthly. If the rent is paid annually, it must be paid in advance on or before July 1<sup>st</sup> of each year commencing with July 1, 2000. If the rent is paid monthly, it must be paid in advance on or before the first of each month commencing with July 1, 2000. Beginning on July 1, 2001 and on the first of July for every year thereafter, the annual rent (or each monthly payment) will be increased by the percentage in the increase of the national CPI index for the previous calendar year. Alternatively, the rent may be increased as provided in a rates and charges study prepared by an airport consultant and adopted by the Board of County Commissioners. All rental payments owed by the Lessee to the County that remain unpaid for more than 30 days will begin to accrue interest at a rate calculated from the original due date until the date the County actually receives the money. The interest rate is the one established by the Comptroller of the State of Florida under Sec. 55.03, FS, for the year in which the rental payment(s) became overdue. The right of the County to claim interest – and the obligation of the Lessee to pay it – are in addition to, and not in lieu of, any other rights and remedies that the County may have under this lease or that are provided by law.

c) The Lessee acknowledges that, notwithstanding the lease term provided for in this paragraph and subparagraph 9(b), nothing in this lease creates any duty or obligation on the part of the County to the Lessee, or to any third persons, to keep the FKMAP open and operating. If the County elects to close the FKMAP and cease operations, then this lease will automatically terminate with no liability whatsoever on the part of the County to the Lessee or any third persons who may have a contractual or business relationship with the Lessee. The Lessee will have the obligation to pay rent up to the date of closure but will otherwise have no further duty or obligation under this lease. The Lessee may also remove any fixtures and improvements to the premises that would otherwise become the property of the County under subparagraph 3(b). This subparagraph 2(c) will survive the automatic termination of this lease if the FKMAP is closed.

3. a) By June 30, 2002, the Lessee must have built, and obtained a certificate of occupancy for, the facilities required by subsection VI(D)(4) of the County's Revised Standards for Commercial Aeronautical Activities, a copy of which is attached to this lease and incorporated as Exhibit B. In order to assure that the facilities are, in fact, timely completed, the Lessee must adhere to the following construction schedule:

1) By December 31, 2000, a complete application (complete as determined by the Monroe County Planning Department) for a conditional use must be filed with the Monroe County Planning Department;

2) By June 30, 2001, all necessary permits must have been received and facilities construction begun;

3) By June 30, 2002, the facilities must be complete, inspected and a certificate of occupancy received.

The construction schedule set forth above are material terms and conditions of this lease. The failure of the Lessee to meet the construction schedule – at any step – is a material breach of this lease that entitles the County to terminate the lease under paragraph 10. The FKMAP Director may (but is under no obligation to do so) extend the construction schedule dates because of circumstances beyond the control of the Lessee such as hurricanes or other natural disasters.

b) At the end of the 20 year term of this lease, or if terminated sooner under paragraphs 9 or 10, the facilities required by this paragraph will become the property of the County without any payment due or owed the Lessee. During the term of this lease the Lessee must keep the premises and facilities, including the time while the facilities are under construction, free and clear of any liens or other encumbrances. If any lien or other encumbrance is filed on the facilities or premises, the Lessee must immediately cause the lien or encumbrance to be canceled and removed.

c) When the facilities are nearing completion the County will provide paving from the taxiway to the premises' boundary line. The County is under no other obligation to furnish paving at the premises unless state or federal grant money becomes available for such paving and the Lessee is willing to pay any matching funds needed to obtain the grant.

d) All utility services to the facilities are the responsibility of the Lessee.

4. During the first two years of this lease while the facilities required in paragraph 3 are under construction, the Lessee may provide the services described in subparagraph 1(b) from a mobile vehicle or on other parcels at the FKMAP where the Lessee has the permission of the tenant(s). The authorization provided by this paragraph 4 is temporary and terminates on June 30, 2002, unless the construction schedule for facilities has been extended by the FKMAP Director.

5. During the term of this lease the Lessee must keep in full force and effect the insurance required in Exhibit C. Exhibit C is attached to this lease and incorporated and made a part of it.

6. a) The Tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

b) That in the event of breach of any of the above nondiscrimination covenants, Owner shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, part 21 are followed and completed including exercise or expiration of appeal rights.

c) It shall be a condition of this lease, that the Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter

described together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

d) That the Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.

e) That the Lessee expressly agrees for itself, its successors and assigns to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

f) This lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Airport Owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of such lands from the Airport Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Owner pertaining to the FKMAP.

g) Notwithstanding anything herein contained that may be or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are nonexclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport.

7. The privileges and rights granted Lessee under this lease are non-exclusive. The County reserves the right to enter into leases with other lessees to provide the same or similar services at FKMAP.

8. The Lessee may terminate the lease without cause upon giving the County at least 60 days written notice. If the facilities are complete, they will automatically become the property of the County on the termination date; if incomplete, the facilities remain Lessee's property and the Lessee will cause them to be removed at his own cost before the termination date.

9. a) The Lessee may not assign this lease or sublease the premises without the approval of the County's Board of County Commissioners.

b) The Lessee may terminate this lease based on the failure of the County to perform a duty or obligation required of it under the lease by sending written notice to the County specifying the failure and giving the County at least twenty days from the County's receipt of the notice to correct the failure. If the County does not timely correct its failure to perform, then the Lessee may terminate this lease by sending written notification to the County of the termination. A waiver by the Lessee of an act of the County's failure to perform does not constitute a waiver of subsequent failures and does not prevent the Lessee from subsequently terminating this lease for cause.



10. The County may terminate this lease based on the Lessee's failure to perform its duties and obligations under this lease by sending a written notice to the Lessee specifying the failure and giving the Lessee at least ten days to correct the failure. If the Lessee does not timely correct its failure to perform then the County may terminate this lease for cause by sending the Lessee written notification of the termination. The County's waiver of the Lessee's failure to perform its duties and obligations under this lease does not constitute a waiver of subsequent failures and does not prevent the County from subsequently terminating this lease for cause.

11. All written notices required under this lease must be sent certified mail, return receipt requested, to the following:

Lessee  
Tony D'Aiuto, d/b/a  
Antique Aircraft Restorations  
7500 Gulfstream Blvd.  
Marathon, FL 33050

Lessor  
Monroe County  
Florida Keys Marathon Airport  
9400 Overseas Highway  
Marathon, FL 33050

12. Both parties have read and reviewed this lease agreement. Therefore, this agreement is not to be construed against any party on the basis of authorship.

13. This lease agreement is governed by the laws of the State of Florida and the United States. Venue for any litigation arising under this lease agreement must be in a court of competent jurisdiction in Monroe County, Florida.

14. This written lease represents the parties final mutual agreement and supersedes any prior agreements, whether written or oral. This lease agreement may only be modified by a written amendment signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this lease agreement on the date first written above.

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Mayor/Chairperson

ATTEST:

ANTIQUE AIRCRAFT RESTORATIONS

By \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Tony D'Aiuto

jdairportantiqueaircraft

W. BROWN & ASSOCIATES  
INSURANCE SERVICES

DATE 12/6/00  
WARRANTY: N.P. YES

cc: File  
4675 MacArthur Court, Ste. 770  
Newport Beach, CA 92660  
(949) 851-2060

*Bennett Moore*

**CERTIFICATE OF INSURANCE**

THIS IS TO CERTIFY TO: Monroe County Board of County Commissioners, it's Employees  
and Officials, 5100 College Road, Key West, FL 33040

THAT THE FOLLOWING POLICY OF INSURANCE HAS BEEN ISSUED TO:

Antique Aircraft Restoration, Inc.

7500 Gulfstream Blvd., Marathon, FL 33050

POLICY NO. NAF3003331

POLICY PERIOD FROM: September 6, 2000 TO: September 6, 2001

INSURANCE COMPANY: Greenwich Insurance Company

**DESCRIPTION OF COVERAGES AND LIMITS OF LIABILITY:**

**Airport Liability:**

Single Limit Bodily Injury and Property Damage \$ 1,000,000.00 each occurrence  
But aggregate as respects products/completed operations and personal injury including:

<input checked="" type="checkbox"/> Premises	<input type="checkbox"/> Personal Injury
<input checked="" type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> Contractual
<input type="checkbox"/> Independent Contractors	<input type="checkbox"/>
<input checked="" type="checkbox"/> Hangarkeeper's Liability:	\$ 200,000.00 each aircraft
	\$ 1,000,000.00 each occurrence
Deductible:	\$ 5,000.00 each loss

**Additional Coverages:**

The above Certificate Holder is also provided with a Hold Harmless.

The above Certificate Holder is included as an Additional Insured but only to the extent of liability vicariously imposed upon the Additional Insured solely as the result of an act or omission of the Named Insured or its employees in connection with the Named Insured's Operations.

**Subject to Y2K Endorsement**

Should any of the above described policy(ies) be canceled before the expiration date hereof, the issuing company will endeavor to give 30 days\* notice to the certificate holder named herein. However, failure to mail such notice shall not impose any obligation nor any liability of any kind upon the company, its representatives or agents.

\*10 days for non-payment

By: *James P. Brown*

W. Brown & Associates  
Insurance Services

Date of Issue: November 21, 2000

Cert No.: 1



**BOARD OF COUNTY COMMISSIONERS**

MAYOR Charles "Sonny" McCarty, District 3  
Mayor Pro tem Dixie Spchar, District 1  
Nora Williams, District 4  
George Neugent, District 2  
Murray Nelson, District 5



Monroe County Risk Management  
1100 Simonton Street  
Key West, FL 33040  
(305)292-4542 Voice  
(305)292-4564 Fax  
(305)295-4342 Fax

August 25, 2002

Antique Aircraft Restoring, Inc.  
7500 Gulfstream Blvd.  
Marathon, FL 33050

Re: CERTIFICATE OF INSURANCE

Dear Sirs/Madam:

Our files indicate that your insurance has expired. Please forward a current **ORIGINAL** Certificate of Insurance in compliance with the contract for:

**LEASE AGREEMENT**

To the Risk Management office at above address indicating coverage for the following:

<b>AIRCRAFT LIABILITY</b>	<b>9/6/01</b>
<b>HANGARKEEPER'S LIABILITY</b>	<b>9/6/01</b>

The Certificate must notate "Monroe County Board of County Commissioners" as certificate holders and additional insured as required in your contract.

If you have any questions, please contact me at the Risk Management office at (305)292-4542.

Sincerely,

Maria Slavik  
Risk Management Specialist